

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BOARD OF TRUSTEES OF THE  
NORTHERN CALIFORNIA  
PLASTERERS HEALTH AND  
WELFARE TRUST FUND, et al.,

Plaintiffs,

v.

DAVIDSON PLASTERING, INC.,

Defendant.

Case No. 15-cv-2386-PJH

**ORDER ADOPTING MAGISTRATE  
JUDGE'S REPORT AND  
RECOMMENDATION**

The court has reviewed Magistrate Judge Ryu's Report and Recommendation Re: plaintiffs' motion for default judgment, as well as plaintiffs' objections to the report. The court finds the report correct, well-reasoned and thorough, and adopts it in every respect other than the amount of contractual liquidated damages, as explained below. Accordingly, plaintiffs' motion for default judgment is GRANTED.

The report and recommendation first sets forth the three categories of damages sought by plaintiffs: (1) contributions that became due before the suit was filed but were paid after the filing of the action, (2) contributions that became due after the suit was filed and were paid before the ruling on this motion, and (3) contributions that were paid, but were paid late, before the filing of the action.

The report recommended that statutory liquidated damages be awarded for category (1) in the amount of **\$8,258.26**. See Dkt. 25 at 9. As to categories (2) and (3), the report recommended that no statutory liquidated damages be awarded, but instead,

1 that liquidated damages be awarded as a matter of contract. Id. at 9. As a result, rather  
2 than receiving the 20% liquidated damages award provided for by statute, plaintiffs would  
3 receive a 10% liquidated damages award provided for by the parties' contract. In the  
4 report, the court calculated a 10% liquidated damages award by taking the total  
5 requested liquidated damages award of \$108,394.00, subtracting the \$8,258.26  
6 mentioned above, then dividing the remainder by two (on the assumption that the  
7 remainder represented a 20% liquidated damages award for the contributions in  
8 categories (2) and (3)).

9 Plaintiffs filed objections to the latter calculation, arguing that for the months of  
10 October and November 2013, January through June 2014, August through December  
11 2014, and January through February 2015, the liquidated damages were already  
12 calculated at 10% in plaintiffs' motion for default judgment, so they did not need to be  
13 divided in two by the court. In contrast, the requested liquidated damages for the months  
14 of June through October 2015 were calculated at 20% in the default judgment motion,  
15 making the court's division correct in those instances. Even though plaintiffs' original  
16 motion papers did not make this clear, it has since submitted evidence showing the  
17 contribution amounts in those months, and indeed, the originally-requested liquidated  
18 damages for the months of October and November 2013, January through June 2014,  
19 August through December 2014, and January through February 2015 do represent a  
20 10% award. See Dkt. 27-1, Ex. A, B. Accordingly, the court sustains plaintiffs' objection,  
21 and the contractual liquidated damages figure will be adjusted to \$83,678.32 (which  
22 represents a 10% award for October and November 2013, January through June 2014,  
23 August through December 2014, and January through February 2015), less the amount  
24 already paid by defendants (\$15,100.62), resulting in a total of **\$68,577.70** in liquidated  
25 damages for categories (2) and (3). See Dkt. 27-1, Ex. B, Dkt. 24-1, ¶ 10. When  
26 combined with the \$8,258.26 from category (1), it results in a total liquidated damages  
27 award of **\$76,835.95**.

28 When combined with the other amounts recommended in the report (\$12,135.82 in

1 interest, \$7,653.00 in attorneys' fees, and \$483.00 in costs), it results in a total of  
2 **\$97,107.77**, and the court hereby awards that amount to plaintiffs.

3  
4 **IT IS SO ORDERED.**

5 Dated: May 19, 2016



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PHYLLIS J. HAMILTON  
United States District Judge